

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

In the Matter of

**COMPUTER RESERVATION SYSTEM
(CRS) REGULATIONS**

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)
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) **Dockets** **OST-97-2881**
) **OST-97-3014**
) **OST-98-4775**
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REPLY OF NORTHWEST AIRLINES, INC.

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Dated: October 23, 2000

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Northwest Airlines, Inc. ("Northwest") hereby respectfully submits the following Reply to the Supplemental Comments filed in response to the Department's Supplemental Advance Notice of Proposed Rulemaking ("SANPRM"), published in the Federal Register on July 24, 2000.¹ Above all, the Supplemental Comments show why it is in the public interest to leave Internet travel sites free of comprehensive regulation, requiring no more than a disclosure of bias. The Department should reject calls for special regulation of multi-airline owned Internet travel sites and leave airlines free to distribute their fares as they see fit. Northwest believes the CRS rules are no longer necessary. If the Department renews the CRS rules, however, Northwest urges the

¹ 65 Fed. Reg. 45,551 (July 24, 2000).

Department to retain Section 255.10(a) without amendment and continue to exempt corporate fares from the rules.

I. Regulating Internet Travel Sites Would Be Anti-Consumer, Anti-Competitive and Contrary to the Government's E-Commerce Policy

Northwest agrees with American, Continental, Delta, Midwest Express, Orbitz and United that Internet travel sites must remain free of regulation so they can provide competitive, unbiased, low-cost alternatives to the dominant CRS systems. As United says, subjecting the Internet, “with its potential for enormous consumer benefits, to any regulation should be done only with extreme caution” and “subjecting [the Internet] to regulations as competition- and innovation-stifling as the CRS regulations would be a disaster.”² The CRS rules “have largely insulated CRS vendors from competitive market forces” by prohibiting price competition and requiring system owners to participate in all systems.³ As a result, the cost to airlines of CRS services used by travel agents has skyrocketed, preventing airlines from reducing the cost of distributing their services through “brick and mortar” travel agents and thwarting innovation in that distribution channel. Spurred by market forces, the fledgling Internet sites have produced many more innovative alternatives in air transportation distribution than the regulated, highly-concentrated CRSs have in their much longer history. The Department should refrain from imposing “new regulation that prevents the Internet from bringing desperately-needed competition to airline distribution costs.”⁴

² United Comments at 3 (emphasis in original).

³ Id. at 4.

⁴ Supplemental Comments of American at 2.

If the history under the CRS rules and the emergence of innovative, low-cost online alternatives to traditional distribution channels are not enough to persuade the Department to refrain from regulating the Internet, the federal government's e-commerce policy should do so. Several commenters point out the Administration warning that, "For [the Internet's] potential to be realized fully, governments must adopt a non-regulatory, market-oriented approach to electronic commerce." The White House, A Framework for Global Electronic Commerce, July 1, 1997, at 3. Regulating Internet travel sites would be directly contrary to the Administration's philosophy that, "Parties should be able to enter into legitimate agreements to buy and sell products and services across the Internet with minimal government involvement or intervention" and that "[u]nnecessary regulation of commercial activities will distort development of the electronic marketplace by decreasing the supply and raising the cost of products and services for consumers the world over." Id. As Continental shows, the Republican eContract 2000 shares the same philosophy.⁵ In the words of Rep. John Kasich (R-Ohio), "It is the Internet and the new economy that have unleashed individual creativity and potential" and "the only thing that can stand in the way of this remarkable progress is intrusive government." Remarks to the Republican National Convention, August 2, 2000. Both major presidential candidates favor minimal regulation of Internet content.⁶

⁵ See Supplemental Comments of Continental at 11 & n.14.

⁶ The Economist, "Issues 2000" (Special), Sept. 30, 2000. Vice President Al Gore has said, "[t]he government's role should not be to regulate content, obviously." Democratic Debate in Los Angeles on March 1, 2000. The Republican Platform calls for "[r]estrain[ing] the hand of government so that it cannot smother or slow the growth of

(continued...)

Comprehensive regulation of Internet travel sites, as recommended by some CRSs and other commenters, would be anticonsumer, anticompetitive and contrary to the federal policy which has been endorsed by both major political parties.

II. The Department Should Not Adopt Special Rules for Any Sites
Regardless of Ownership

Some commenters (including Sabre, Expedia and Travelocity.com) suggest that Orbitz and other potential web sites that are owned or marketed by more than one airline should be regulated. Northwest strongly opposes regulation of some Internet sites but not others. Moreover, special rules aimed at Orbitz, which will not even be launched until next year, or other multi-airline sites will lead to further entrenchment of the dominant Internet sites, Microsoft's Expedia and Sabre's Travelocity.com, which control over 70% of the Internet air transportation sales and have exclusive access to 90% of the portals used by most consumers.

The comments of Orbitz, the major airlines and Midwest Express show that Orbitz will bring huge benefits for competition and consumers. Through Orbitz, consumers will receive more choices of flights and lower fares. Unlike the two dominant "independent" online sites (Expedia and Travelocity.com), Orbitz aims "to provide absolutely unbiased displays of every airline's flights and fares, whether or not an airline has an interest in or enters into an agreement with Orbitz." (Orbitz Comments at 28) Orbitz will also return part of the booking fee to its airline associates, in sharp contrast with Travelocity (owned by Sabre), which demands preferred inventory from airlines but

worldwide commerce and communication through the Internet." "The American Dream; Prosperity with a Purpose," at 7, <http://www.rnc.org/2000/2000platform2>.

is unwilling to reduce the CRS costs to suppliers. Some commenters claim that Orbitz will preclude airlines from making all fares available through another channel or site.⁷ This is absolutely untrue. There is nothing exclusive about Northwest's agreement with Orbitz. Northwest has already tried to negotiate an Orbitz-type agreement with Travelocity.com, but that website refuses to lower its fees.

Rather than inhibiting pro-consumer, pro-competitive Orbitz before it even begins operating or has any market share, the Department should encourage Orbitz and similar sites by leaving them free of regulation so they can compete effectively with the four CRSs, as well as with Travelocity.com and Expedia, which dominate online bookings.

III. If the Department Retains the CRS Rules, It Should Require Internet Travel Sites to Disclose Bias, If Any

While Northwest believes the Internet must remain free of regulatory interference if it is to provide effective competition for CRSs, Northwest believes the Department should require sites to disclose whether they are neutral or non-neutral, using standards in the CRS rules, if those rules are retained for CRSs.

Midwest Express has documented the display bias which exists in Expedia. A Consumer Reports travel letter submitted by Consumers Union "concludes that [Internet] travel sites don't easily, fairly and thoroughly deliver" information about low fares and flight options. Travel Web sites: Look around before you book, Consumer Reports travel letter at 1 (October 2000) ("CRTL"). CRTL tested the four largest "independent" Internet sites, Cheap Tickets, Microsoft's Expedia, Lowestfare, and Sabre's

⁷ See Supplemental Comments of American Antitrust Institute, Consumer Alliance, and Travelocity.com.

Travelocity.com and determined “that none of the four web sites consistently offered complete and fair listings of all viable flights in our tests.” CTRL at 8. For example:

- On Travelocity.com, advertised airlines dominated flight listings.
- On Travelocity.com the featured airline was listed first 48% of the time and dominated other listings.
- On Lowestfare, many TWA flights with inconvenient itineraries (obtained through a contract fare deal) were repeatedly listed first.

Northwest pulled its inventory from the Sabre-powered LowestFare.com site last month because that site was editing out Northwest’s flights in city-pairs where Northwest had the lowest fare without disclosing this editing to consumers. Northwest has also found similar instances of carrier preference bias in two other Sabre-powered on-line sites, Travelocity.com and CheapTickets.com, and is continuing to investigate others.

Consumers today have hundreds of alternate Internet sites at their fingertips if they want a more complete or better display, but consumers are also entitled to know when and how their selected site is biased. If the Department retains the CRS rules, the Department should require Internet travel sites to disclose whether they are neutral or non-neutral, using the current standard for carrier neutrality. Consumers Union and travel agents can also help consumers find sites with the best prices and searches, which will further encourage competition and reduce bias.

IV. Airlines Should Be Free To Offer Their Fares Where They See Fit

Amadeus, Sabre and others urge the Department to require airlines to provide all fares on all distribution channels. Such a rule would impose an unprecedented mandatory distribution requirement on airlines, while all other types of U.S. retailers and vendors remain free to market their products and prices where they see fit. Such a requirement

would also harm consumers and airlines. As the Department declared last week, “The pro-competitive policy directives in 49 U.S.C. § 40101 allow airlines to choose the channels for distributing their services as well as the prices and terms of sale for different channels, subject of course, to the antitrust laws.” (Order 2000-10-23 at 5)

Like the mandatory participation rule, which has the unintended consequence of increasing booking fees, a mandatory rule requiring distribution of all airfares over all channels would have the unintended negative consequence of reducing or eliminating discount fares. Quite simply, low fares for consumers will evaporate if airlines must offer them through high cost distribution channels. (See Order 2000-10-23 at 5) For its part, Northwest would not have begun to offer its weekend CyberSaver Fares if it had to offer those same discount fares over CRSs and other high-cost distribution channels because the cost of doing so would be prohibitive. Low fares offered on branded airline and other Internet sites benefit consumers. Such fares also provide competition for CRSs because they are a way to attract consumers to use airline web sites and the Internet in general. The Department should support this healthy competition and its pro-consumer benefits rather than inhibit them with unnecessary regulation.

V. Corporate Discounts Are Pro-Competitive and Should Remain Outside the CRS Rules

Northwest disagrees with Amadeus, Galileo and travel agents who suggest that the CRS rules should be expanded to cover fares offered to corporate customers. Just as Internet travel sites should remain outside the CRS rules, corporate travel departments should continue to be excluded from the rules. Corporations have sufficient leverage to choose their CRSs and determine how to manage their travel needs.

VI. Section 255.10(a) Benefits Consumers and Should be Retained

Northwest disagrees with the Air Carrier Association of America (“ACAA”), America West, Orbitz, and certain travel agents who oppose sale of booking data without consent of the airlines or agents whose data are sold. Northwest also opposes ACAA’s call for immediate suspension Section 255.10(a), which requires CRSs to make marketing and booking data available to carriers on non-discriminatory terms.

If the Department renews the CRS rules, Section 255.10(a) should be retained without amendment because CRS booking data are the best planning tool available to airlines for determining how to meet consumer demand. Analysis of the data allows airlines to add new or expanded services where they are needed. Without these data, airlines would be unable to forecast demand reliably and provide service required by consumers.

Northwest agrees with Delta that ACAA’s comments contain a number of exaggerated or inaccurate statements. Contrary to ACAA’s suggestion, it is not possible to determine from CRS data the price paid by a passenger or if the passenger actually traveled on the flight shown. Nor is any information about individual passenger identity released to airlines by CRSs. Since no pricing information is included in CRS data and it is historical data, it is ridiculous to suggest CRS data could be used for signaling. Finally, smaller carriers can receive customized data packages from CRSs that limit the information provided, thereby reducing their costs for the data.

Conclusion

Northwest reiterates its view that the CRS rules are no longer needed. If the Department decides to retain the CRS rules, the mandatory participation rule should be loosened and the definition of system owners should be expanded to include marketers. Whether or not the CRS rules are readopted the Department should leave Internet travel sites free of comprehensive regulation so they can provide effective competition for the CRSs which continue to play a key role in distribution for the air transportation industry. If Internet travel sites are left free to develop to their full potential, the marketplace may accomplish pro-consumer and pro-competitive objectives which have not been achieved under the CRS rules: providing unbiased information and lower fares for consumers and reducing distribution costs for airlines.

Respectfully submitted,

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